

Devolution in Northern Ireland: Union and autonomy

AM Hello and welcome to the Commons Library Podcast, where our experts give you an informed and impartial take on issues being discussed in Westminster and where you live.

I'm Andrew Mackley, and last week I was joined by David Torrance, the Devolution and Constitution specialist in the House of Commons Library. We talked about devolution in Northern Ireland, specifically how the devolution settlement in Northern Ireland came about, how it's supposed to operate, why it's not currently operating, and how Northern Ireland is being governed in the meantime, before finally, and briefly, touching upon the impact that Brexit is having. So, David, thank you very much for being here.

DT My pleasure.

AM So it seems highly appropriate to discuss this topic at the moment at a time when there's no Northern Ireland Executive or fully operational Assembly as there's supposed to be under the devolution settlement, so that Northern Ireland can be governed largely autonomously. Indeed, neither of those two devolved institutions have functioned properly since January 2017.

So devolution in Northern Ireland exists at the moment in a sort of limbo. It's still there, it's not been suspended in a formal sense as has happened in the past, and the UK Government in Westminster has been at pains to avoid instituting direct rule. So it's fair to say that it remains generally on all sides that a fully functional devolution and autonomous government should be reinstated as quickly as possible, although in practice there are few signs that this will happen in the immediate future.



But to begin with, perhaps we can start with the origins of the devolved settlement. More casual observers of the UK constitution might be forgiven for thinking about devolution as a relatively new aspect of the UK constitutional architecture. The Scottish Parliament and Welsh Assembly were both innovations of the late 1990s, for example. But Northern Ireland has a much longer and arguably a more complicated history of devolved executive and legislative power which is tied closely to its broader history.

So to start with perhaps you could outline the historical context of devolution in Northern Ireland. When did the process begin, and how was it developed?

DT Well, devolution in some form is as old as Northern Ireland itself. Northern Ireland was created in 1921, the culmination of a long running debate about Home Rule for all of Ireland, and there was a compromise from the British Government in 1921 which partitioned Ireland, and ironically, gave Home Rule or devolution to the one part of Ireland which had strongly resisted it since the late 19th century.

So for more than fifty years there was the Parliament of Northern Ireland, its own Government, two houses, the House of Commons and the Senate, a Prime Minister, a Governor and even its own Privy Council. That was prorogued and then abolished at the height of the Troubles, the story of which is well known in the early '70s, and since then there were attempts by various governments to restore some sort of devolution in Northern Ireland, but this time offer a power-sharing nature. Under the old system the Parliament and Government was very much dominated by one party, the Ulster Unionists, but since then the emphasis has been on sharing power.

So, devolution in its sort of contemporary iteration is of a similar vintage to that in Scotland and Wales, but the crucial difference with Northern Ireland is that it has a much deeper story, a much deeper provenance going back almost a century.



AM That's the historical context for devolution in Northern Ireland and generally how it's supposed to operate. Perhaps we could drill into the detail a bit. What sort of policy jurisdiction do the devolved institutions in Northern Ireland have? Could you perhaps give us some examples of the power levers they've got access to, and maybe how they differ to the devolved institutions in Scotland and Wales?

DT Well again, the sort of split of powers in Northern Ireland today owes something to its back story, so what are known as transferred matters in Northern Ireland are sort of vaguely analogous to those devolved matters in Scotland and Wales. And it's the kind of areas you'd expect; health, education, local government, economic development. And then there are what are called excepted matters, and those are roughly the same as reserved matters in Scotland and Wales, so things you'd expect to be reserved; the constitution, international relations, defence, national security and so on.

And then there's an intermediate category called reserved powers, things like financial services, pensions regulation, broadcasting, import, export controls. And interestingly, and this is different from Scotland and Wales, those reserved matters can be transferred to the Northern Ireland Assembly, provided there's cross community consent and also parliamentary approval in Westminster. And indeed, the most high profile example of that were powers over policing and criminal justice, which were originally reserved when the Assembly was set up in 1998, but were transferred to the Assembly in 2010.

There are lots of areas of overlap in terms of devolved matters in Scotland, Wales and Northern Ireland, but there are also a couple of important points of difference. So the Scottish Parliament and Welsh Assembly in varying degrees have control over income



tax, but the Northern Ireland Assembly does not, it actually has relatively limited financial powers, compared with the other legislatures in the UK.

AM Interestingly, Northern Ireland Assembly has control over corporate tax, and that's sort of to do with its close geographical relationship with the Republic of Ireland.

DT Yes, although that's actually more theoretical than real. The UK Parliament passed the corporation tax in Northern Ireland in 2015 which provided some power over corporation tax, but it's not yet been fully brought into force. There are a couple of caveats. First of all you need a functioning Assembly and Executive, but further to that the Executive has to demonstrate sound finances before those powers are fully enacted.

Similarly, there is a degree of devolution over air passenger duty, but again, that was introduced for one air route, I think from Belfast to Newark in the United States, but that's no longer running, so it's actually more theoretical than real. But of course there are similar examples in Wales and Scotland, that's not distinct to Northern Ireland. But of course all this is now in limbo, this is how things were until early 2017, but since then we've had a curious situation, as I think you've said, where there is neither direct rule nor fully functioning devolution.

AM So as you say, it exists in a kind of limbo, it's not operating how it's meant to at the moment, so why did the devolved settlement collapse in early 2017?

DT Basically there was a political disagreement between the two main parties in the power sharing Executive and Assembly, the Democratic Unionist Party and Sinn Féin. Martin McGuinness, who was Deputy First Minister for Sinn Féin, resigned and under the devolution settlement in Northern Ireland that meant that the First Minister also

had to resign, and that was Arlene Foster from the DUP. And the source of that dispute was policy matter, the renewable heat incentive...

AM What was that?

DT ...for which Arlene Foster had been responsible in an early ministerial post. Basically a subsidy scheme for home insulation, similar to one that exists in Great Britain, but there were various problems administratively. The budgets had gone, there was an overspend. And so that was the sort of political route of the disagreement, but subsequent to that several rounds of talks between the main parties and the Secretary of State have failed to find a way forward because there's disagreement between the DUP and Sinn Féin over social issues; same sex marriage, abortion, cultural issues - Sinn Féin are very keen to have an Irish language bill - and of course much more broadly, Brexit: the DUP campaigned for Brexit and Sinn Féin campaigned against. So there are several areas now of political dispute which, as I say, several rounds of talks are no further forward in resolving.

AM And are those the main issues that are preventing the restoration of the devolved settlement in Northern Ireland?

DT Yes. I mean it's difficult to pin down sort of one overarching issue. Initially there was also a personnel dimension. Sinn Féin said that they would not accept Arlene Foster as First Minister. Again, they appear to have shifted on that, but it hasn't really made much difference in terms of the rather intractable situation with regards to policy issues, cultural issues and, as I say, Brexit.

AM So what's happening in the meantime then? We've already said there's no direct rule from Westminster, so how is Northern Ireland being governed?



DT Well, in a couple of different ways. So when there was formal direct rule from the early '70s until the late '90s Northern Ireland was governed, as Scotland and Wales were, by a Secretary of State and a territorial department, in Northern Ireland's case the Northern Ireland Office, and legislatively a lot of matters went through Parliament via orders in council, which is a form of statutory instrument. And there were various problems with that in terms of how democratically accountable they were held to be.

So now in the absence of either direct rule or fully functioning devolution it's a combination of the Secretary of State, Karen Bradley, legislating where she considers it absolutely necessary, and that's usually in budgetary terms. There have been a couple of budget bills for Northern Ireland every year since the devolved institutions collapsed. And also at the end of last year the UK Government introduced the Northern Ireland Executive Formation and Exercise of Functions Act which allows the Secretary of State to take some additional responsibilities, mainly in the realm of public appointments.

And it also provides some legal cover for civil servants in Northern Irish departments to take sort of fairly low-level day to day decisions on planning and things like that, to keep basically what is termed good governance or public administration in Northern Ireland functioning from day to day while talks and the possible restoration of the devolved institutions are pending.

AM And how long can that go on for? Given that prospects for restoration of devolution aren't immediately clear, how long can we continue with this situation?

DT Well, the other thing that Act did at the end of last year was suspend the requirement for the Secretary of State to call fresh Assembly elections in the absence of an executive. Now there was what is called a sunset clause in that Act which I think



the deadline was March this year, but it also allowed the Secretary of State to extend it for five months, which she did a couple of weeks ago.

So that takes us up to I think August this year, at which point that aspect of the Act will lapse and therefore there will be the need for further primary legislation. But of course the UK Government's stated view is that they remain fully committed to restoring the devolved institutions and they hope that by that point perhaps with some sort of resolution to Brexit that the party talks in Northern Ireland will move forward more successfully than they have in the past few years.

AM Now, you mentioned Brexit there, we've mentioned it a couple of times, we've done pretty well to get this far and only mention it a few times. But we should probably touch on it in a little bit more detail now. Not too much detail as the question probably deserves a podcast episode all to itself, but how is Brexit impacting upon the politics of Northern Ireland, and specifically, is it a hinderance on the restoration of devolution?

DT Well as I said earlier, it obviously, and most people acknowledge this, has an impact in the context of attempts to restore the devolved institutions because of that fairly fundamental disagreement between the DUP who supported Brexit and Sinn Féin who opposed it. And the other factor that Brexit has given rise to of course is talk of what is called a border poll, or more prosaically, a referendum, on the constitutional future of Northern Ireland. And a distinctive feature of the devolution statute in Northern Ireland is actually provision for a referendum which doesn't directly exist in the equivalent statutes in Scotland and Wales.

And so what the Northern Ireland Act 1998 says, that if the Secretary of State believes there to be support for a united Ireland, then he - and the legislation is gender specific - can call a referendum to gauge public opinion on that issue but does

not really explain how the Secretary of State reaches that decision. One assumes it would be based on opinion polling. Sinn Féin have renewed their calls for a border poll, they say that Brexit has shifted public opinion and created a situation where that ought to be considered.

And there has been some interesting movement in opinion polls in Northern Ireland where people are asked, you know, if there is a hard Brexit, if there is perhaps a hard border in the island of Ireland how would you vote? And there appears to be movement in that respect, but the UK Government's line when asked on this is that they don't believe there is yet support for a united Ireland, and so they have no intention of having a referendum.

AM Well, we should say at this point that the government's negotiated Withdrawal Agreement and the associated Political Declaration have yet to pass the House of Commons, and of course that contains within it the backstop. But leaving that aside for now, what happens next in terms of devolution for Northern Ireland? Is there any realistic prospect for the restoration of devolution, or are we going to continue on as now?

DT Well, that's obviously a matter for the Secretary of State and the parties involved. As I say, the UK Government's position remains unchanged, that they remain committed to restoring devolution, they don't want to implement direct rule. There is a slight division in the parties in Northern Ireland where the DUP more or less said that they would prefer direct rule over the current situation which is a sort of constitutional limbo. Obviously I think for political reasons the UK Government is reluctant to do that, as they've stated on many an occasion.

And of course another factor relating to that is the DUP's relationship with the Conservative Party in Parliament after the 2017 General Election. As is well known,

the Conservative Party reached the confidence and supply deal with the DUP. And of course this has further complicated matters because this gives the DUP a sort of UK-wide locus, although it's not of course a formal coalition, and Sinn Féin have objections to that.

So on a number of levels, both policy issues in terms of the Brexit negotiations and also the Conservative Party's need for a majority in the House of Commons, Northern Ireland has assumed a much higher profile in both domestic and international politics, and that has consequences for the devolved institutions.

AM So this is still very much a developing situation and we'll look to see how it plays out, in particular whether devolution can be restored to Northern Ireland before Westminster has once again to pass primary legislation to ensure the continued governance of Northern Ireland. And, David, you and your colleagues in the Commons Library will continue to keep us all updated as and when things change?

DT Absolutely. Not only are there briefing papers on devolution in Northern Ireland, but we also do regular bill briefings whenever there's a budget bill. For Northern Ireland there's usually two a year and as I say, there's a full comprehensive briefing on the Northern Ireland Executive Formation and Exercise of Functions bill from last year.

And actually I've just published a paper on reserved matters in the United Kingdom. We produce a lot of material which quite rightly looks at devolution in Northern Ireland, Scotland and Wales, but this looks at the devolution settlements from another angle. From the Westminster perspective of what matters, policy issues and areas remain the responsibility of the UK Parliament and Government.

AM Thank you very much. And that's it for this episode of the Commons Library podcast. For relevant briefing papers, including those mentioned by David on Northern Ireland

and devolution, remember to look at the episode notes published alongside our recording on our website. To keep up to date with what our researchers are working on visit commonslibrary.parliament.uk and follow us on Twitter [@commonslibrary](https://twitter.com/commonslibrary).

Next week we'll be joined by Wendy Wilson, the Commons Library's housing policy specialist, to talk about private rented housing policies in England and the rest of the UK. The Commons Library Podcast is a House of Commons production. The producer is Grace Rowley. The editor is Chris Blanchett, and the presenters are Andrew Mackley and Eleanor Davis. Music is by Tom Mackley.